BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Bobby G. Runyan Dist. 2, Map 69, Control Map 69, Parcel 18.03 Residential Property Tax Year 2005	)) Hamilton County))

INITIAL DECISION AND ORDER

Statement of the Case

This appeal deals with the issue of rollback taxes under the Agricultural, Forest and Open Space Land Act of 1976, Tenn. Code Ann. § 67-5-1001, et seq. (hereafter referred to as the "greenbelt law"). The administrative judge conducted a hearing in this matter on August 10, 2006 in Chattanooga, Tennessee. The appellant, Bobby G. Runyan, was represented by John C. Cavett, Jr., Esq. The assessor of property, Bill Bennett, was represented by David Norton, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background and Pertinent Facts

As will be discussed in greater detail below, this appeal concerns the period of time for which Mr. Runyan is liable for rollback taxes under the greenbelt law. The pertinent facts are not in dispute and are summarized immediately below.

Subject property consists of an 80 acre tract located at 10261 Highway 58 in Ooltewah, Tennessee. Subject property first began receiving preferential assessment under the greenbelt law in 1992 when the property owner at that time, Effie Ruth Lovell, filed a greenbelt application which was approved by the assessor of property. On June 5, 2001, Effie Ruth Lovell conveyed subject property by warranty deed in fee simple, reserving a life estate for herself, to a group of four owners (hereafter referred to as the "Lovell Heirs"). The Lovell Heirs did not file a greenbelt application in their own names, but the property continued to receive preferential assessment under the greenbelt law.

On April 22, 2002, Effie Ruth Lovell died thereby extinguishing her life estate. The Lovell Heirs did not file a greenbelt application in their own names, but subject property continued to receive preferential assessment under the greenbelt law.

On August 23, 2004, the Lovell Heirs sold subject property to the appellant, Bobby G. Runyan. The parties did not discuss or in any way address the fact subject property was receiving preferential assessment under the greenbelt law.

At some unknown date following his purchase, Mr. Runyan received an undated letter from Alan Johnson of the assessor's office which provided in relevant part as follows:

> The property you recently acquired has been valued under the agricultural greenbelt act for lower property taxes. You may qualify for this savings based on actual land use and other factors.
>
> If you are interested in applying for this farm use value, please complete and return the enclosed form for consideration.

* * *

On November 11, 2004, Mr. Runyan submitted a greenbelt application which was approved by the assessor of property.

On April 8, 2005, Mr. Runyan sold subject property to Runser Development. Runser intends to develop subject acreage for residential and/or commercial use. The parties effectively stipulated that this sale triggered rollback taxes under Tenn. Code Ann. §67-5-1008.

In June of 2005, Mr. Runyan received a bill for rollback taxes in the amount of $13,248.77. This amount reflects the tax savings enjoyed for three years under the greenbelt law.

II. Contentions of the Parties and Analysis

The administrative judge finds that the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Mr. Runyan maintained that subject property lost its greenbelt status when either (1) Effie Ruth Lovell conveyed the property to the Lovell Heirs and retained a life estate on June 5, 2001; or (2) Effie Ruth Lovell died on April 22, 2002. According to Mr. Runyan, either of those events should have triggered rollback taxes and subject property should not have resumed receiving preferential assessment until his greenbelt application was approved on November 1, 2004. In support of this position, Mr. Runyan cited Tenn. Code Ann. § 67-5-1005(a)(1) which provides as follows:

> Any owner of land may apply for its classification as agricultural by filing a written application with the assessor of property by March 1 of the first year for which the classification is sought. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. New owners of the land who desire to continue the previous classification must apply with the assessor by March 1 in the year following transfer of ownership. New owners may establish eligibility after March 1 only by appeal pursuant to parts 14 and 15 of this chapter, duly filed after notice of the assessment change is sent by the assessor, and reapplication must be made as a condition to the hearing of the appeal.
>
> [Emphasis supplied by appellant]

Thus, Mr. Runyan asserted that rollback taxes should only be levied for the period between November 11, 2004 and April 8, 2005. Mr. Runyan did not dispute that he was liable for rollback taxes during this period of time.

The assessor contended that since the April 8, 2005 sale of subject property constituted a change in use rollback taxes were triggered under Tenn. Code Ann. § 67-5-1008(a). The assessor maintained that because subject property had enjoyed preferential assessment since 1992 three years rollback taxes were due pursuant to Tenn. Code Ann. § 67-5-1008(d)(1). The assessor asserted that the rollback taxes were properly assessed to Mr. Runyan in accordance with Tenn. Code Ann. § 67-5-1008(f) which states in relevant part:

> If the sale of agricultural. . . land will result in such property being disqualified as agricultural. . . land due to conversion to an ineligible use or otherwise, *the seller shall be liable for rollback taxes unless otherwise provided by written contract*. . . .
>
> [Emphasis supplied]

In this case, the sales contract did not provide that the buyer would be liable for rollback taxes.

The administrative judge finds it unnecessary to determine whether subject property technically ceased to qualify for preferential assessment as contended by Mr. Runyan. The administrative judge finds Mr. Runyan's argument presupposes that greenbelt status simply ceases by operation of law. Respectfully, the administrative judge finds that no legal authority was offered in support of this contention.

The administrative judge finds that even if it is assumed arguendo that the assessor should have previously assessed rollback taxes or required a new application, the fact remains subject property continued to receive preferential assessment. The administrative judge finds such a situation no different from the myriad of situations where an erroneous assessment remains in effect because it is not appealed or corrected pursuant to Tenn. Code Ann. § 67-5-509. Indeed, in *ABG Caulking Contractors, Inc.* (Davidson Co., Tax Year 2004) (May 11, 2006), the Assessment Appeals Commission found the State Board of Equalization lacked jurisdiction to set aside a forced assessment despite the fact that "the forced assessment yields a tax bill of $22,731.46 versus a likely bill of about $9,000 had the schedule been properly filed." Final Decision and Order at 2.

The administrative judge would also note that unless Mr. Runyan can establish that the previously enjoyed greenbelt status ceased by operation of law, Tennessee law specifically imposes liability on the current owner or seller of property when the property is disqualified from greenbelt. See Tenn. Code Ann. § 67-5-1008(d)(3) which provides in relevant part as follows:

> . . . Rollback taxes shall be a first lien on the disqualified property in the same manner as other property taxes, and shall also be a personal responsibility of the current owner or seller of the land. . .

Mr. Runyan next argued that it would be inequitable to make him responsible for rollback taxes when he was not the beneficiary of any tax savings prior to his acquisition of subject property. The assessor countered that statutory construction must trump equity and Mr. Runyan is liable by statute.

Respectfully, the administrative judge finds that the State Board of Equalization lacks equitable powers. See *Trustees of Church of Christ* (Obion Co., Exemption) wherein the Assessment Appeals Commission ruled in relevant part as follows:

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

Final Decision and Order at 2.

The administrative judge finds that even if the State Board of Equalization had equitable powers, it must be concluded that Mr. Runyan could have easily avoided the situation he finds himself in. The administrative judge would initially observe that the issue of rollback taxes could have been addressed in the sales contract. See Tenn. Code Ann. § 67-5-1008(f) quoted above. Moreover, the title search should have presumably made Mr. Runyan aware of the greenbelt situation. Finally, Mr. Johnson's letter to Mr. Runyan quoted above stated in the very first paragraph that subject property had been receiving preferential assessment. The administrative judge finds that Mr. Johnson's letter along with the greenbelt application and informational pamphlet entered into evidence as parts of collective exhibits #1 and #2 could have reasonably been expected to put Mr. Runyan on at least inquiry notice.

Counsel for Mr. Runyan argued that the rollback statute must be strictly construed because it involves a forfeiture of taxes. Respectfully, the administrative judge finds that no legal authority was cited in support of this proposition.

Mr. Runyan's final argument was that the rollback taxes should be prorated if, in fact, they were properly levied for the period of time prior to his purchase. This would result in the Lovell Heirs being responsible for rollback taxes during the period of time they owned subject property.

The administrative judge finds that the foregoing argument must be rejected for two reasons. First, the administrative judge finds that the greenbelt law makes no provision for prorating rollback taxes. See Tenn. Code Ann. §§ 67-5-1008(d)(3) and 67-5-1008(f) quoted above. Second, the administrative judge finds that the various property tax statutes must be read in pari materia. The administrative judge finds that it is generally the rule in Tennessee that property taxes are assessed as of January 1 of the tax year unless otherwise provided for. See Tenn. Code Ann. §67-5-504(a). The administrative judge finds that the only exceptions to this general rule are specifically provided for in Tenn. Code Ann. §§ 67-5-201, 67-5-603 and 67-5-606.

Based upon the foregoing, the administrative judge finds rollback taxes were properly assessed to Mr. Runyan for the statutory prescribed maximum of three years.

ORDER

It is therefore ORDERED that rollback taxes be assessed to the appellant as previously determined by the assessor of property.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of August, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: John Cavett Jr., Esq.
David Norton, Esq.
Bill Bennett, Assessor of Property